IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1048 of 2002
with
SPECIAL CIVIL APPLICATION No 11866 of 2003
with
MISC.CIVIL APPLICATION No 1501 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TRUSUNS CHEMICAL INDUSTRY LTD

Versus

TATA INTERNATIONAL LTD

Appearance:

1. Civil Revision Application No. 1048 of 2002 with
Special Civil Application No.11866 of 2003 &
Misc.Civil Application No.1501 of 2002
MR BR GUPTA for Petitioner No. 1
MS KA MEHTA with MR ASHOK L SHAH for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/03/2004

ORAL JUDGEMENT

The petitioner of this Civil Revision Application is the original opponent of Execution Petition No.610/2001, pending before the City Civil Court at Ahmedabad. The said petition is preferred by the present respondent, Tata International Ltd., for enforcement of a foreign award. In the aforesaid application, the petitioner herein, who is the original opponent of that application has raised various preliminary objections, which are negatived by the trial Court. The petitioner-original opponent has approached this Court by way of this revision under Section 115 of C.P.C. Since the present petitioner has also filed a suit for declaration and injunction, which is pending in the Court of Civil Judge (S.D.) at Gandhidham, the present petitioner has also filed an application under Section 24 of C.P.C., being M.C.A. No.1501/2002, for transfer of Execution Petition pending in the City Civil Court to the Court of Civil Judge (S.D.) at Gandhidham. The present respondent, Tata International Ltd., has filed a Special Civil Application No.11866/ 2003, under Article 227 of the Constitution of India, by which certain observations made by the trial Court in its judgement are challenged. Since decision in Special Civil Application and Misc.Civil Application depends upon the decision of this Civil Revision Application, parties have addressed the Court at length in this Civil Revision Application.

2) In order to appreciate the controversy between the parties, it is necessary to refer to certain factual aspects of the matter. The respondent of this Civil Revision Application, Tata International Ltd., and the present petitioner entered into two contracts, by which the respondent had agreed to purchase certain quantity of special grade Caster Oil from the present petitioner herein. Subsequently, some dispute arose between the parties and ultimately arbitration proceedings have been initiated. The dispute was raised before the Arbitrator, i.e. Federation of Oil, Seeds & Fats Associations Ltd., London, U.K. (FOSFA). The arbitral tribunal passed an award, being award No.3747 of 2001 dated 1-2-2001, directing the present petitioner to pay certain sum of money as damages. It is pointed out to this Court that present petitioner preferred an appeal to FOSFA Board against the said arbitral award. Ultimately, the said appeal was withdrawn by the present petitioner and the award of the arbitral tribunal became final.

3) It seems that, initially, the respondent preferred an application before the Bombay High Court for

enforcing the said award by resorting to Section 47 of the Arbitration and Conciliation Act, 1996. The present petitioner was the respondent before the Bombay High Court. In the said proceedings, petitioner herein has submitted various objections regarding maintainability of the aforesaid petition before the Bombay High Court. The Bombay High Court came to the conclusion that it has no territorial jurisdiction, as no part of cause of action arose within the territorial limits of the said Court and, therefore, the said application was rejected by the Bombay High Court on the ground that the same is not maintainable before that Court.

4) Thereafter, the respondent preferred an application before the City Civil Court, Ahmedabad for enforcing the aforesaid foreign award. The City Civil Court, Ahmedabad entertained that application and the said application is pending for final disposal before the learned Judge of City Civil Court, Ahmedabad, which is numbered as Execution Petition No.610/2001. The aforesaid Execution Petition is at large before the trial Court. In the said petition, certain preliminary objections were raised by the present petitioner and the petitioner requested the Court to decide the same. By way of preliminary objection, an objection is raised to the effect that the original arbitral award is an ex parte award and that the award is given by the arbitrator in collusion with the respondent herein. It was also argued before the trial Court that the request of the present respondent, for referring the dispute to arbitration, was rejected by the learned Civil Judge (S.D.), Gandhidham in Special Civil Suit No.19/2001. It is also the say of the present petitioner that the suit, being Special Civil Suit No.19/2001 is pending before the Gandhidham Court for setting aside the arbitration award and till the said suit is decided, the foreign award cannot be executed or enforced. Another objection was taken about the maintainability of the said proceedings before the City Civil Court on the ground that such execution petition is not maintainable as the respondent was required to prefer an application for making such award a decree of the Court and without there being any application of making such award a decree of the Court, the execution petition straightaway is not maintainable.

5) After considering the argument of both the sides and after considering the material on record, the trial Court overruled the aforesaid preliminary objections raised by the petitioner. The trial Court came to the conclusion that it has jurisdiction to entertain the said application for enforcement of the foreign award. The

trial Court also found that since the opponent (the petitioner herein) is having its property within the territorial jurisdiction of the trial Court, the said court is entitled to proceed with the application for execution of the aforesaid foreign award. However, while passing the impugned order the trial Court has also made certain incidental observations by observing that since the civil suit being Special Civil Suit No.19/2001 is pending before the Civil Judge (S.D.), Gandhidham, and that the award in question is under challenge in the aforesaid suit, it would be appropriate for the parties to take appropriate steps to see that both the proceedings are clubbed together before anyone Court so as to avoid any dissenting or conflicting decisions. It is the said observation, which has prompted the respondent herein to file a Special Civil Application No.11866/2003 for deleting such observations from the order.

6) The present petitioner has filed a Misc.Civil Application, resorting to Section 24 of C.P.C., with a prayer that the proceedings pending in the City Civil Court, Ahmedabad may be transferred to the Gandhidham Court so that both the proceedings, i.e. enforcement application, which is filed as Execution Petition, and Special Civil Suit, filed by the present petitioner, can be heard together.

7) On behalf of the petitioner, learned advocate Mr.B.R.Gupta submitted that in view of the fact that a substantive civil suit is filed by the present petitioner challenging the arbitration award, the present application for enforcement of said award is not maintainable. For this, he has relied upon Section 34 of the Act. Section 34 of the Act deals with setting aside the arbitration award on various grounds, as incorporated in the said Section. Relying upon the said observations, it is argued by Mr.Gupta that till the said civil suit is decided by the Court, the application for enforcement of the foreign award is not maintainable, as the same is premature. It is also argued by Mr.Gupta that the arbitral award becomes final only after the application under Section 34 is decided by the Court and only thereafter the award in question will become final and binding to the parties. It is argued by Mr.Gupta that the civil suit filed by the petitioner therefore, is in the nature of objections against the arbitral award and it is in the nature of an application under Section 34 of the Act. Mr.Gupta has also placed reliance on Section 36 of the Act.

8) On behalf of the respondent it is submitted by learned advocate Mrs.Mehta that Section 34 or Section 36 is not applicable in the present case, as this is a case of enforcement of foreign award, which is required to be considered as per the provisions contained in part II of the Act. It is submitted by Mrs.Mehta that there is a special procedure provided in the Act for enforcement of the foreign award. Therefore, it is submitted that there is no substance in the preliminary objections raised by the present petitioner before the trial Court and the trial Court is justified in rejecting said objections.

9) It is required to be noted that there is a special machinery in the Act for enforcement of foreign award. The point which is required to be considered is whether the civil suit filed by the present petitioner in the Gandhidham Court can be equated with an application under Section 34 of the Act. At this stage, it is fruitful to refer to Sections 47, 48 and 49 of the Arbitration & Conciliation Act, 1996, which are as under :

"47.Evidence : (1) The party applying for the enforcement of a foreign award shall, at the time of the application, produce before the Court -

(a) the original award or a copy thereof, duly authenticated in the manner required by the law of the country in which it was made;

(b) the original agreement for arbitration or a duly certified copy thereof; and

(c) such evidence as may be necessary to prove that the award is a foreign award.

(2) If the award or agreement to be produced under sub-section (1) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.

Explanation - In this section and all the following sections of this Chapter. "Court" means

the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction over the subject-matter of the award if the same had been the subject matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes.

48.CONDITIONS FOR ENFORCEMENT OF FOREIGN AWARDS-(1) Enforcement of a foreign award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the Court proof that -

(a) the parties to the agreement referred to in Section 44 were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decision on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be enforced; or

(d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2) Enforcement of an arbitral award may also be refused if the Court finds that---

(a) the subject-matter of the difference is not capable of settlement by arbitration under the law of India; or

(b) the enforcement of the award would be contrary to the public policy of India.

Explanation. --- Without prejudice to the generality of Cl. (b) of this sub-section, it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption.

3) If an application for the setting aside or suspension of the award has been made to a competent authority referred to in Cl. (e) of sub-section (1) the Court may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

49. ENFORCEMENT OF FOREIGN AWARDS. --- Where the Court is satisfied that the foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of that Court.

10) Considering the aforesaid provision, it is clear that the Court can even refuse to enforce the foreign award as per the grounds available in the provision. Accordingly, so far as the foreign award is concerned, the same is governed by the provisions incorporated in part II of the Act. I, therefore, find considerable substance in the argument of Mrs.Mehta that Section 34 of the Act is not applicable so far as enforcement of the foreign award is concerned.

Even assuming that Section 34 is applicable to the facts of the present case then also, in my view, there is absolutely no substance in the argument of Mr.Gupta that till the Special Civil Suit instituted by the petitioner is decided, the application filed before the City Civil Court, Ahmedabad is not maintainable. It is required to be noted that suit in the Gandhidham Court is for declaration and injunction and the said suit cannot be equated with an application as contemplated by

Section 34 of the Act, as the nature of both the proceedings are totally different. So far as Section 34 of the Act is concerned, it prescribes certain time limit for raising objections against an award and an application for setting aside such award is required to be made in accordance with Sub section (2) and Sub section (3) of Section 34 of the Act. Special grounds are mentioned in the said provision for setting aside the arbitral award. Therefore, the substantive Civil Suit filed by the petitioner cannot be equated with the proceedings under Section 34 of the Act and, therefore, even assuming that Section 34 is applicable, in relation to the foreign awards, then also, it cannot be said that the application before the City Civil Court, Ahmedabad is not maintainable till the Civil Suit of the petitioner is decided by the Gandhidham Court. Even limitation prescribed for raising objections under Section 34 is also different than the limitation regarding filing of a substantive civil suit. It is required to be noted that in the aforesaid Civil Suit, the petitioner has filed an application to obtain interim relief, but till date the same is not granted.

11) I am not impressed by the argument of Mr.Gupta that in view of the substantive civil suit, which is filed by his client, the award in question cannot be enforced till the suit is decided and that such foreign award is not enforceable in view of the pendency of the civil suit. Only remedy available to the petitioner is to invoke provisions of Section 48 of the Act and the petitioner can always lodge objections as provided by the said provisions and after considering such objections, the Court has to reach the satisfaction whether such foreign award is enforceable and ultimately, if any such order is passed under Section 48 of the Act, such order is deemed to be the decree of the Court. Looking to the scheme of the Act, it is clear that whatever objections, which are required to be raised, are required to be raised in consonance with the provisions of Section 48, in enforcement application itself. Ultimately, if the Court comes to the conclusion that such an award is enforceable, only thereafter such award will be treated as a decree of the Court. Therefore, considering the scheme of the Act, it is clear that such foreign awards are required to be dealt with as provided in part II of the Act and as per the provisions of Sections 44 to 49 of the Act. Therefore, the contention of Mr.Gupta that his Special Civil Suit is in the nature of an application under Section 34 of the Act, and till the suit is decided, the Court has no power to enforce this foreign

award, is required to be negatived and accordingly, the same is rejected.

12) At this stage, reference is required to be made to the decision of the Apex Court reported in the case of Fuerst Day Lawson Ltd. Vs. Jindal Exports Ltd., reported in (2001) 6 SCC 356. In the said decision, it has been observed by the Apex Court in paras 30,31 and 32 as under :

"30.Alternatively it was contended that a party holding a foreign award has to file a separate application and produce evidence as contemplated under Section 47 and also satisfy the conditions laid down under Section 48 and it is only after the court decides about the enforceability of the award, it should be deemed to be a decree under Section 49 as available for execution. In other words, the party must separately apply before filing an application for execution of a foreign award. The Arbitration and Conciliation Ordinance, 1996 was promulgated with the object to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral award and to define law relating to conciliation and for matters connected therewith or incidental thereto. In para 4 of the Statement of Objects and Reasons contained in the Act, the main objects of the Bill are stated. To the extent relevant for the immediate purpose, they are:

"(i) to comprehensively cover international commercial arbitration and conciliation as also domestic arbitration and conciliation;

(ii)-(iv)
(v) to minimize the supervisory role of courts in the arbitral process;
(vi)
(vii) to provide that every final arbitral award is enforced in the same manner as if it were a decree of the Court;"

31. Prior to the enforcement of the Act, the law of arbitration in this country was substantially contained in three enactments, namely, (1) the Arbitration Act, 1940, (2) the Arbitration (Protocol and Convention) Act, 1937, and (3) the Foreign Awards (Recognition and Enforcement) Act,

1961. A party holding a foreign award was required to take recourse to these enactments. The Preamble of the Act makes it abundantly clear that it aims at consolidating and amending Indian laws relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards. The object of the Act is to minimize supervisory role of the Court and to give speedy justice. In this view, the stage of approaching the court for making the award a rule of court as required in the Arbitration Act, 1940 is dispensed with in the present Act. If the argument of the respondent is accepted, one of the objects of the Act will be frustrated and defeated. Under the old Act, after making an award and prior to execution, there was a procedure for filing and making an award a rule of Court i.e. a decree. Since the object of the Act is to provide speedy and alternative solution to the dispute, the same procedure cannot be insisted upon under the new Act when it is advisedly eliminated. If separate proceedings are to be taken, one for deciding the enforceability of a foreign award and the other thereafter for execution, it would only contribute to protracting the litigation and adding to the sufferings of a litigant in terms of money, time and energy. Avoiding such difficulties is one of the objects of the Act as can be gathered from the scheme of the Act and particularly looking to the provisions contained in Sections 46 to 49 in relation to enforcement of a foreign award. In para 40 of Thyssen judgement already extracted above, it is stated that as a matter of fact, there is not much difference between the provisions of the 1961 Act and the Act in the matter of enforcement of foreign award. The only difference as found is that while under the Foreign Awards Act a decree follows, under the new Act the foreign award is already stamped as the decree. Thus, in our view, a party holding a foreign award can apply for enforcement of it but the court before taking further effective steps for the execution of the award has to proceed in accordance with Sections 47 to 49. In one proceedings there may be different stages. In the first stage the Court may have to decide about the enforceability of the award having regard to the requirement of the said provisions. Once the court decides that the foreign award is enforceable, it can proceed to

take further effective steps for execution of the same. There arises no question of making foreign award a rule of court/decree again. If the object and purpose can be served in the same proceedings, in our view, there is no need to take two separate proceedings resulting in multiplicity of litigation. It is also clear from the objectives contained in para 4 of the Statement of Objects and Reasons, Sections 47 to 49 and the scheme of the Act that every final arbitral award is to be enforced as if it were a decree of the Court. The submission that the execution petition could not be permitted to convert as an application under Section 47 is technical and is of no consequence in the view we have taken. In our opinion, for enforcement of a foreign award there is no need to take separate proceedings, one for deciding the enforceability of the award to make it a rule of the court or decree and the other to take up execution thereafter. In one proceeding, as already stated above, the court enforcing a foreign award can deal with the entire matter. Even otherwise, this procedure does not prejudice a party in the light of what is stated in para 40 of Thyssen judgement.

32. Part II of the Act relates to enforcement of certain foreign awards. Chapter I of this Part deals with New York Convention awards. Section 46 of the Act speaks as to when a foreign award is binding. Section 47 states as to what evidence the party applying for the enforcement of a foreign award should produce before the court. Section 48 states as to the conditions for enforcement of foreign awards. As per Section 49, if the court is satisfied that a foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of that court and that court has to proceed further to execute the foreign award as a decree of that court. If the argument advanced on behalf of the respondent is accepted, the very purpose of the Act in regard to speedy and effective execution of foreign award will be defeated. Thus none of the contentions urged on behalf of the respondent merit acceptance so as to uphold the impugned judgement and order. We have no hesitation or impediment in concluding that the impugned judgement and order cannot be sustained."

(Emphasis supplied)

13) Considering the aforesaid aspect of the matter, in my view, there is absolutely no substance in any of the preliminary objections raised by the present petitioner before the trial Court. As observed earlier, the application of the respondent herein before the trial Court for enforcement of the foreign award is not dependant upon the Civil Suit filed by the petitioner in the Gandhidham Court. In the present proceedings, the Court is required to see whether the foreign award is enforceable as per the provisions contained in Part II of the Act. Since the application for enforcement of the foreign award is still at large before the trial Court, ultimately, the trial Court has to decide the same in accordance with law and on its own merits. Suffice it to say that so far as preliminary objections raised by the petitioner are concerned, there is absolutely no substance in any of the said preliminary objections.

14) So far as territorial jurisdiction of the executing Court, before whom the application for enforcing the award is pending, is concerned, it is required to be noted that, initially, the respondent herein went before the Bombay High Court for enforcing the said foreign award and the learned Single Judge of the Bombay High Court has observed in para 4 as under :

"4. We then come to the issue as to the meaning of the expression subject matter of the Award and whether that would mean also subject matter of the arbitration proceedings. This is important because under Section 2 (3) the expression with reference to the expression court means the subject matter of the arbitration. The subject matter of the arbitration would include contracts. The subject matter of an Award cannot include a contract as adjudication in respect of the claims under the contract has been done and has resulted into an award. The subject matter of the Award therefore, is liable to be construed to mean what is the relief finally awarded by the Award. It may be in the form of money, it can be for specific performance, or the like. Under the Foreign Awards (Recognition and Enforcement) Act, 1961, the said issue was in issue before the Apex Court in the case of Brace Transport Corporation of Monrovia Bermuda Vs. Orient Middle East Lines Ltd., Saudi Arabia & Ors. 1993 (4) (Scale) 33. Two paragraphs from the judgement may be reproduced.

"14. It was then submitted by Dr.Ghosh that the subject matter of the award was money and the 1st and 2nd respondents had money in the jurisdiction of the Bhavnagar Court in the form of part of the purchase price of the said vessel payable to them by the 3rd and 4th respondents."

"15. This being an award for money its subject matter may be said to be money, just as the subject matter of the money decree may be said to be money."

It is, therefore, clear that in respect of an award for money, subject matter can be said to be money. In other words, therefore, petition for enforcement of the foreign award can be filed to the court where the party may have money. This is important consideration considering a party need not be tied down as in the case of Part I where the subject matter is the subject matter of the arbitration. In other words, if the party has a foreign award in its favour, it can seek to enforce the award in any part of the country where it is sought to be enforced as long as money is available or suit for recovery of money can be filed. In my opinion, therefore, expression subject matter of the award to the explanation under Section 47 is different from the expression subject matter of the arbitration under Section 2(e) of Part I of the Act.

A foreign award if allowed to be enforced is a deemed decree. It can be enforced anywhere that the respondents may have money. In other words, it is in the nature of forum hunting. The expression subject matter of the award and the subject matter of the arbitration agreement are two different and distinct expressions. In respect of a foreign award, if the expression subject matter of the award was to mean the same thing as the subject matter of the arbitration agreement, in most cases there would be no court available where the award could be enforced as the entire cause of action in respect of the subject matter of the arbitration could be the foreign country. Merely because in the instant case, the contract was entered into in India cannot result in a different interpretation. The expression as the explanation itself permits forum hunting if that expression can be used.

After considering all these provisions a similar view was taken in Arbitration Petition Lodg.No.427 of 2001 in the case of Naval Gent Martine Ltd., Vs. Shivnath Rai Harnarain (I) Ltd., & Ors. decided on 5th July, 2001 in which at the ad interim stage, apart from other issues, the issue as to the meaning of the expression "subject matter of the award" was in issue and has been similarly answered.

In the instant case, defendants do not have their office or carry on business within the jurisdiction of this Court. The offices are either at Gandhidham or Ahmedabad. It is not averred in the petition that the respondents have any money within the jurisdiction of this court. In these circumstances, to my mind, in the absence of the subject matter of the Award being within the jurisdiction of this Court, this Court would have no jurisdiction to hear and decide this petition."

15) It is not in dispute that the present petitioner is having its branch office at Ahmedabad and is also having bank account for day to day commercial transactions at Ahmedabad and, therefore, in view of the Explanation attached to Section 47 of the Act, it is clear that the City Civil Court is having jurisdiction over the subject matter of the award, as application for enforcement is maintainable where the money is lying.

16) In the instant case, subject matter of the award is money payable by the petitioner to the respondent as per the foreign award declared by the arbitral tribunal at London and for enforcing such an award, the respondent can approach the Court, within whose local limits the money is available. Therefore, it cannot be said that no part of the cause of action has arisen within the territorial limits of the City Civil Court, Ahmedabad, especially, when the money of the petitioner is available within the local territorial limits of the Ahmedabad city itself. Therefore, considering the special provision regarding enforcement of a foreign award and considering the fact that the money is available, which can satisfy the foreign award, within the territorial limits of City Civil Court, Ahmedabad, it cannot be said that the City Civil Court, Ahmedabad, is lacking the territorial jurisdiction. Even otherwise, between the same parties, the Bombay High Court itself has observed that such award can be enforced at a place where money is available and it is also an admitted fact that the petitioner-company

is having its branch office at Ahmedabad and it is also not in dispute that the petitioner is a public limited company having its branch office at Ahmedabad and having its regular banking account at Ahmedabad. Therefore, it cannot be said that the City Civil Court at Ahmedabad has no territorial jurisdiction in connection with enforcement of the foreign award. No other points were argued by Mr.Gupta in this revision application.

17) In view of what is stated above, in my view, the trial Court is absolutely justified in overruling the preliminary objections raised by the present petitioner. The execution petition is still at large before the trial Court and the trial Court will have to pronounce its decision on the enforceability of the said award. As the said proceedings are pending before the trial Court, the said proceedings are not required to be delayed by entertaining this application at an interlocutory stage. Therefore, this revision is without any substance and the same is required to be dismissed and it is accordingly dismissed. Rule is discharged. Interim relief stands vacated. No costs.

18) It is required to be noted that the trial Court was not required to make any incidental observations about clubbing two proceedings, i.e., suit and enforcement application. As pointed out earlier, the Civil Suit has nothing to do with the application pending before the City Civil Court, Ahmedabad for enforcement of foreign award and the same is required to be decided on its own merits and in accordance with law and as per the provisions contained in part II of the Act. Therefore, observations of the trial Court regarding clubbing of both the proceedings together are ordered to be deleted from the impugned order of the trial Court.

19) In view of the order passed in this Civil Revision Application, nothing further is required to be done in Special Civil Application No.11866/2003 as the same has become infructuous and it is not necessary to give any further relief in the Special Civil Application. Accordingly, Special Civil Application No.11866/2003 is also disposed of, as having become infructuous.

20) So far as Misc.Civil Application No.1501/2002 for transferring execution proceedings to Gandhidham Court is concerned, there is absolutely no justification in the same and, therefore, Misc.Civil Application No.1501/2002 is dismissed. Rule is discharged. No order as to costs.

21) Writ to be sent to the trial Court forthwith.

(P.B.Majmudar,J.)

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